

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ASCION, LLC,

v. Plaintiff, OPINION and ORDER

ASHLEY FURNITURE INDUSTRIES, INC., 19-cv-856-jdp

Defendant.

Plaintiff Ascion, LLC wants to amend its infringement contentions to accuse some additional leg assemblies sold by defendant Ashley Furniture Industries, Inc. Ashely Furniture contends that it's too late for such an amendment. The dispute has spawned two motions, now fully briefed. Ashley Furniture moves to strike portions of Ascion's expert report that describe the infringement theories not included in Ascion's initial infringement contentions. Dkt. 47. Ascion moves to amend its infringement contentions to reflect the infringement theories included in its expert report. Dkt. 51.

After the deadline for amendments to pleadings, amendments to infringement contentions are considered under Fed. R. Civ. P. 15, which states that the court should freely give leave when justice so requires. Justice is not served if there is undue delay or prejudice to the opposing party. In patent infringement cases, the court grows increasingly reluctant to allow amendments to infringement contentions as other case deadlines approach.

Ascion had exemplars of the leg assemblies it now accuses in April. The parties are still fussing over which assemblies are used in which products, but that's a matter that relates to damages, not infringement theories. Ascion could have amended its infringement contentions in April; the delay is not justified.

Prejudice to Ashley Furniture is inevitable. The amended infringement contentions involve new applications of the claim elements to different structures. It's not as though Ascion were simply identifying new products that use the previously accused assemblies. Sure, the various assemblies are all variations of the multi-part, variable height concept. But when the asserted claims are narrow ones, with limitations carefully drawn to distinguish prior art, subtle differences matter. If the new infringement contentions were allowed, Ashley Furniture would be entitled to update its prior art investigations, invalidity contentions, and claim construction positions. And that would require updated expert reports.

It's too late in the case to accommodate Ascion's expanded infringement theory. We are already on the eve of the dispositive motions deadline, November 2, 2020.

ORDER

IT IS ORDERED that:

1. Plaintiff Ascion's motion for leave to amend its infringement contentions is DENIED.
2. Defendant Ashley Furniture's motion to strike portions of plaintiff's expert report is GRANTED.

Entered October 23, 2020.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge